



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: November 5, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
David Meany, Chief Legal Counsel

for Ben Brancel
David V. Meany

SUBJECT: Chs. ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 91, 92, 94, 105, 123, 127 and 161 – Minor and Technical Changes to Multiple Department Chapters; Final Draft

PRESENTED BY: David Meany

REQUESTED ACTION:

At the November 19, 2014 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a final draft rule (copy attached) related to technical rule changes for the following existing rules: ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 91, 92, 94, 105, 123, 127 and 161

SUMMARY:

Rule Content

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

Plant Inspection and Pest Control

Makes a small change indicating that a responsible state agency, rather than a U.S. department of agriculture official, may now declare an area to be infested with thousand cankers disease.

Pesticide Use and Control

- Decreases licensing fees and surcharges to be consistent with recent statutory changes.
- Corrects spelling and capitalization errors.
- Changes several notes to provide online resources for certification, training and examination materials.

Pesticide Product Restrictions

- Corrects incorrect references to subsections and the misspelling of "strychnine."
- Amends notes to update website addresses.

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An equal opportunity employer

- Removes outdated reference to treatment of aldicarb from the 1980s.
- Incorporates by reference the most recent edition of the current rule standard concerning pesticide poisonings.
- Modifies the record keeping provision relating to chloropicrin to reflect that soil temperature at the time of application is not required to be kept.

Fertilizer and Pesticide Bulk Storage

- Incorporates by reference the most recent edition of minimum design standards for concrete agrichemical containment.
- Updates sections relating to the use of tarps for dry fertilizer unloading from railway cars and sections relating to asphalt and concrete block structures.

Agricultural Chemical Cleanup Program

Amends references required by the renumbering of an administrative code chapter relating to the department of natural resources and corrects a statutory reference to "hazardous substance."

Fertilizer and Related Products

- Decreases various license and tonnage fees and surcharges to be consistent with recent statutory changes.
- Incorporates by reference the most recent edition of the current rule standard concerning fertilizers.

Commercial Feed

Updates the technical standards in the current rule to the most recent versions. Several notes have been modified to add more information about obtaining electronic copies of those publications.

Farmland Preservation

Makes a small change to add language into the zoning section to match language used in the planning section.

Soil and Water Resource Management Program

Updates several sections to reference the current versions of technical standards.

Food Warehouse and Bulk Milk Distributors

Corrects an outdated fee structure relating to the re-inspection of small warehouses which hold non-potentially hazardous foods versus those that hold potentially hazardous foods.

Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights and Measures; Petroleum and Other Liquid Fuel Products

Corrects small grammatical errors and updates the technical references to cite the current NIST Handbook and ATSM fuel standards.

Sales Below Cost

Corrects a grammatical error.

Electronic Communications Services

Aligns the rule with recent legislature changes.

Direct Marketing

Deletes a note no longer necessary in that section.

Agricultural Development and Market Promotion

Amends the "Buy Local" section to reflect a statute change that directs the matching requirement to be an amount at least equal to the grant amount.

Changes from Hearing in Response to Public Hearings and Rules Clearinghouse Comments

DATCP did not receive any written comments from the general public to the Hearing Draft, and no persons appeared at the public hearing held on August 28, 2014, to receive testimony or comments concerning the Hearing Draft.

DATCP made several minor edits to the Hearing Draft, to conform to form, style, and placement requirements, in response to comments received from the Rules Clearinghouse. Minor changes were also made due to notification from one of the Divisions that several of the standards incorporated into certain portions of the rule had recently been updated.

Effect on Small Business

This rule will not have any impact on small businesses or other business. This rule makes minor technical changes that will not have any impact on business standards, costs or operations. See the complete *Initial Regulatory Flexibility Analysis* that accompanies this rule.

Next Steps

If the Board approves this final draft rule, DATCP will submit it to the Governor's Office of Regulatory Compliance. If the Governor's Office approves the final draft rule, the department will then submit the rule to the Legislature for legislative committee review. If the Legislature has no objection to the rule, the department Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

**PROPOSED ORDER OF THE WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 order *to repeal* ATCP 30.22 (2) (a) 3., 33.32 (5) (b), 33.34 (6) (b), 33.44 (2), 42.16 (4) (b) 18.,
3 123.12 (1) (b), 127.80 (2) (Note); *to consolidate, renumber and amend* ATCP 33.34 (6) (intro.)
4 and (a), 123.12 (1) (intro.) and (a); *to amend* ATCP 21.21 (1) (c) 2., 29.11 (3) (a), (b) and (c),
5 29.15 (4) (b), 29.20 (6) (b), 29.25 (5) (a) 1. and 2., 29.26 (9) (a) (Note) and (b) (Note), 29.54 (1)
6 (e) 4., ch. 29 Appendix A, 30.10 (8) (title), 30.22 (3) (a) 3. (Note), (5) (b) 2. and (7) (a) (intro.)
7 and 2. and (b), 30.24 (2) (a), 30.30 (11), 30.31 (3) (b), 33.20 (7) (c) and (Note) and (10) (b)
8 (Note), 33.32 (5) (a) and (Note), 33.38 (1) (a) and (Note), 33.44 (1) (b) and (Note), 33.52 (3) (d)
9 2., 33.70 (1) (title), 35.01 (3), 35.02 (1) (e) 2. and (Note), 35.10 (6) and (Note), 35.16 (6) (a) 1.
10 and (Note), 40.04 (4) (b), 40.06 (2) (a) and (b), 40.08 (8) and (Note), 40.10 (4) (b) 2. and (Note),
11 40.12 (2) (c) 1. and (Note), 40.16 (1) and (Note), 40.18 (2) and (Note), 42.01 (9), 42.06 (3) and
12 (Note), 42.16 (1) (b) and (Note) and (2) (b), 42.32 (2) (b) and (Note), 42.40 (4) (b) and (Note),
13 42.44 (6) (a), (b) and (c) (Note), 42.46 (3) (c), 42.48 (2) (intro.), (a) and (Note) and (2) (b)
14 (Note), 42.52 (2) (b), (c) (intro.) and 1., (d), (e), (f), (g) and (o) (intro.), 42.54 (1) (a) and (Note),
15 42.56 (1) (a), 49.26 (2) (c), 50.04 (3) (dm) 1. and (e), 50.56 (3) (b) 4. a. and b., 50.62 (5) (e) 1.,
16 2., 4. and 5., 50.64 (1) (e) and (5) (a), 50.65 (3) (a) 1. and 2., 50.66 (3) (a) 1., 2. and 3., 50.68 (4)
17 (a), 50.69 (4) (a) 2., 50.70 (4) (b) 3., 7. and 8., 50.705 (3) (d) and (5) (a) 1., 2. and 3., 50.71 (3)
18 (b) 1., 50.72 (3) (a) 2., 50.73 (3) (d) 2., 4., 10. and 11., 50.75 (4) (a) 1., 50.76 (5) (a) 1. and 6.,
19 50.77 (4) (a) 2., 3. and 4., 50.80 (3) (a) 4., 5. and 8., 50.83 (3) (a) 2., 50.85 (4) (a) 2., 50.86 (4)

1 (b) 2., 3., 4., 6. and 7., 50.87 (4) (a) 1., 50.88 (3) (a) 2., 3. and 5., 50.885 (4) (a) 1., 2. and 3.,
2 50.90 (3) (b) 1. and 2., 50.91 (3) (b) 6. and 7., 50.92 (3) (b) 1. and 2., 50.93 (4) (a) 1. and 2.,
3 50.94 (3) (a) 2., 50.95 (3) (a) 2. and 4., 50.96 (3) (b) 2., 6. and 7., 71.02 (5) (b) 3. and 4., 90.01
4 (26), 90.08 (14) (a) 2. and (Note), 90.09 (2) (a), (2) (c) (Note) and (4) (a), 91.01 (4) and (Note),
5 92.02 (1) and (Note), (2) (a) and (3) (c), 92.06 (1) (a) and (b), (2) and (3), 92.22 (1) (b) and
6 (Note) and (2), 92.40 (2), 94.200 (1), 105.005 (2), 161.43 (3); and, *to create* ATCP 30.22 (7)
7 (am), 42.16 (2) (b) (Note), 90.01 (15g) and (Note) and (15r) and (Note), 92.01 (10d), (10h) and
8 (Note), (10p) and (Note) and (10t) and (Note); *relating to* various minor and technical rule
9 changes.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

This rule makes minor technical changes to a number of current rules administered by the department of agriculture, trade and consumer protection ("DATCP").

Statutes Interpreted

Statutes Interpreted: ss. 91.02, 92.05, 93.48, 94.01(1), 94.64, 94.65, 94.69, 94.72, 94.73, 97.27, 98.07, 100.20 and 100.30, and ch. 168, Stats.

Statutory Authority

Statutory Authority: ss. 91.02, 92.05 (3) (c), 93.07 (1), 93.48 (1), 94.01(1), 94.64 (9), 94.65 (9), 94.69 (1), 94.72 (13), 94.73 (11), 97.27 (5), 98.07 (4), 100.20 (2) (a), 100.30 and ch. 168, Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to adopt rules to interpret laws under its jurisdiction. It also has specific rulemaking authority related to various matters addressed by this rule (see above). This rule makes minor changes to a number of different rules administered by DATCP. The changes are adopted under essentially the same authority used to adopt the original rules.

Related Rules or Statutes

This rule is not substantially affected by statutes or rules other than those identified in this rule.

Plain Language Analysis

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

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Deletes a note no longer necessary in that section.

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Amends the "Buy Local" section to reflect a statute change that directs the matching requirement to be an amount at least equal to the grant amount.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the Department of Justice to incorporate the updated technical standards incorporated by reference in this rule. Copies of the updated standards will be kept on file with DATCP and the Legislative Reference Bureau.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The technical rule changes proposed in this rule will not create any disparities between Wisconsin rules and federal statutes and regulations.

Comparison with Rules in Adjacent States

The technical rule changes proposed in this rule will not create any disparities between Wisconsin and the adjacent states.

Summary of Factual Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule merely makes minor technical changes to current rules.

Analysis and Supporting Documents Used to Determine Effect on Small Business

Because this rule makes minor technical changes, no significant analysis or documentation was required to determine that the proposed rule will have no impact on small businesses.

Effect on Business Impact

This rule will not have any impact on small businesses or other business. This rule makes minor technical changes that will not have any impact on business standards, costs or operations. See the complete *Final Regulatory Flexibility Analysis* that accompanies this rule.

Environmental Impact

This "housekeeping" rule will have no significant impact on the environment.

Agency Contact

Kelly Monaghan
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

1
2 **SECTION 1.** ATCP 21.21 (1) (c) 2. is amended to read:

3 ATCP 21.21 (1) (c) 2. Any state or country, or any delineated area within a state or
4 ~~nation~~ country, which the U. S. ~~department of agriculture~~ responsible state agency has declared
5 to be infested with thousand cankers disease.

6 **SECTION 2:** ATCP 29.11 (3) (a), (b) and (c) are amended to read:

7 ATCP 29.11 (3) (a) If the applicant sold less than \$25,000 of the product during the
8 preceding year for use in this state, ~~\$3.50~~ \$2.80.

9 (b) If the applicant sold at least \$25,000 but less than \$75,000 of the product during the
10 preceding year for use in this state, ~~\$120~~ \$96.00.

11 (c) If the applicant sold at least \$75,000 of the product during the preceding year for use
12 in this state, an amount equal to ~~0.75%~~ 0.60% of gross revenues from product sales during the
13 preceding year for use in this state.

14 **SECTION 3.** ATCP 29.15 (4) (b) is amended to read:

15 ATCP 29.15 (4) (b) An agricultural chemical cleanup surcharge of ~~\$28~~ \$22.40.

16 **SECTION 4.** ATCP 29.20 (6) (b) is amended to read:

17 ATCP 29.20 (6) (b) Beginning with the license year that begins on January 1, ~~2008~~
18 2015, an agricultural chemical cleanup surcharge of ~~\$38~~ \$30.40.

19 **SECTION 5.** ATCP 29.25 (5) (a) 1. and 2. are amended to read:

20 ATCP 29.25 (5) (a) 1. A license fee of \$40, ~~except that the license fee is \$30 for each of~~
21 ~~the license years beginning January 1, 1999 and January 1, 2000.~~

22 2. An agricultural chemical cleanup surcharge of \$14 \$11.20.

1 **SECTION 6.** ATCP 29.26 (9) (a) (Note) and (b) (Note) are amended to read:

2 ATCP 29.26 (9) (a)

3 **Note:** Training consists of a self-study manual and, for some certification categories,
4 supplementary training sessions. Training may be obtained by contacting the
5 University of Wisconsin-Extension at the following address: University of
6 Wisconsin-Extension; Pesticide Applicator Training, Department of Agronomy;
7 1575 Linden Drive; Madison, WI 53706-1597, phone: (608) 262-7588. Online
8 information on pesticide certification, training, and examination registration is
9 available at <http://pestexam.datcp.wi.gov>.

10
11 (b) **Note:** Examination dates may be scheduled by contacting the department at the
12 following address: Wisconsin Department of Agriculture, Trade and Consumer
13 Protection; Division of Agricultural Resource Management, Pesticide
14 Certification and Licensing; P. O. Box 8911; Madison, WI 53708-8911; Phone
15 (608) 224-4548. Online examination registration is available at
16 <http://pestexam.datcp.wi.gov>.

17
18 **SECTION 7.** ATCP 29.54 (1) (e) 4. is amended to read:

19
20 ATCP 29.54 (1) (e) 4. A device or system used only to apply pesticides directly to the ~~rots~~
21 roots of ornamental trees and shrubs.

22 **SECTION 8.** Ch. ATCP 29, Appendix A, is amended to read:

Chapter ATCP 29

APPENDIX A

This is an example of a notice that complies with ss. ATCP 29.55 (2) and 29.56 (2):

NOTICE TO CUSTOMER

Before we apply any pesticides to your property, we will provide you with any of the following information that you request:

- The common chemical or brand name of each pesticide that may be applied.
- A copy of the pesticide label for each pesticide that may be applied. The label will tell you the pesticide active ingredient, use directions and safety precautions.
- Each date on which pesticides will be applied.
- A contact name, address and telephone number where you can obtain further information about the pesticide application.

If you want this information in writing, we will provide it free of charge before we make the application. Whether or not you ask for this pre-application information, we will provide you with the following information when we complete the application:

- The name, and license number ~~and certification number~~ of the individual who made or directly supervised the application.
- The name and location of the pesticide application.
- The chemical name, brand name and EPA registration number of each pesticide applied.
- The amount of pesticide applied.
- The date and time of the pesticide application.
- Any post-application precautions which you should observe.
- A free copy of the pesticide label (if requested).

We will notify residents of pesticide applications to living areas, and will post warning signs for lawncare applications, as required by law.

1 SECTION 9. ATCP 30.10 (8) (title) is amended to read:

2 ATCP 30.10 (8) (title) ~~STRYCHNINE~~ STRYCHNINE PERMITS.

3 SECTION 10. ATCP 30.22 (2) (a) 3. is repealed.

4 SECTION 11. ATCP 30.22 (3) (a) 3. (Note) is amended to read:

5 ATCP 30.22 (3) (a) 3.

6 **Note:** A listing of licensed daycares in each county can be found at
7 <http://dcf.wisconsin.gov/childcare/licensed/search.HTM>~~Directories/LCC-~~
8 [Directories.HTM](http://dcf.wisconsin.gov/childcare/licensed/Directories/LCC-Directories.HTM) ~~http://dcf.wisconsin.gov/childcare/licensed/Directories/LCC-~~
9 [Directories.HTM](http://dcf.wisconsin.gov/childcare/licensed/Directories/LCC-Directories.HTM).

10 SECTION 12. ATCP 30.22 (5) (b) 2. is amended to read:

11 ATCP 30.22 (5) (b) 2. Metam sodium and chloropicrin toxicology and poisoning
12 manifestations as described in *Recognition and Management of Pesticide Poisonings*, United
13 States environmental protection agency, EPA ~~735-R-98-003~~ 735-K-13-001, ~~March 1999~~ 2013,
14 ~~fifth~~ sixth edition, or in other materials approved by the department.

15 SECTION 13. ATCP 30.22 (7) (a) (intro.) and 2. are amended to read:

16 ATCP 30.22 (7) (a) (intro.) A person applying a ~~chloropierin pesticide or a metam~~
17 sodium pesticide shall keep all of the following records:

18 2. The time of each inspection under sub. ~~(4)~~ (6), the results of the inspection, and any
19 actions taken under sub. ~~(4)~~ (6) as a result of the inspection.

20 SECTION 14. ATCP 30.22 (7) (am) is created to read:

21 ATCP 30.22 (7) (am) A person applying a chloropicrin pesticide shall keep all of the
22 following records:

23 1. Applicable records required under s. ATCP 29.21 or 29.33.

24 2. The time of each inspection under sub. (6), the results of the inspection, and any
25 actions taken under sub. (6) as a result of the inspection.

1 SECTION 15. ATCP 30.22 (7) (b) is amended to read:

2 ATCP 30.22 (7) (b) A person shall retain records under par. (a) and (am) for at least 2
3 years, and shall make them available to the department for inspection and copying upon request.

4 SECTION 16. ATCP 30.24 (2) (a) is amended to read:

5 ATCP 30.24 (2) (a) *Amount and frequency of use.* No pesticide containing the active
6 ingredient aldicarb may be applied at a rate exceeding 2 lbs. of aldicarb active ingredient per
7 acre, or to the same application site more than once in any 2 successive years. ~~Sites treated with~~
8 ~~aldicarb in 1987 may not be treated with aldicarb in 1988.~~

9 SECTION 17. ATCP 30.30 (11) is amended to read:

10 ATCP 30.30 (11) "Irrigation" has the meaning specified in s. ATCP 29.01 ~~(28)~~ (22).

11 SECTION 18. ATCP 30.31 (3) (b) is amended to read:

12 ATCP 30.31 (3) (b) No person may apply irrigation water to any site to which atrazine
13 product has been applied ~~on or after April 1, 1994~~ for a 2-year period following the application
14 of atrazine product, unless the application of irrigation water is conducted in accordance with an
15 irrigation management program that does not cause the field moisture capacity in the root zone
16 of the soil being irrigated to be exceeded.

17 SECTION 19. ATCP 33.20 (7) (c) and (Note) are amended to read:

18 ATCP 33.20 (7) (c) An enclosure under par. (a) 3. shall consist of a secure wall or fence that is
19 at least 5 feet tall at every point, and free of gaps that could allow unauthorized persons to enter. Security
20 fencing installed on a concrete secondary containment structure wall shall comply with chapter 2 of the
21 ~~Wisconsin minimum design standards for concrete agricultural containment~~ Wisconsin Minimum Design
22 and Construction Standards for Concrete Mixing and Loading Pads and Secondary Containment
23 Structures (February 2005), if the secondary containment structure is constructed after November 1, 2006.

1 **Note:** The ~~Wisconsin minimum design standards for concrete agrichemical containment~~
2 Wisconsin Minimum Design and Construction Standards for Concrete Mixing and
3 Loading Pads and Secondary Containment Structures (February 2005), written by
4 Professor David W. Kammel, department of biological systems engineering,
5 University of Wisconsin-Extension, is on file with the department and the
6 legislative reference bureau. Copies are available from the department, free of
7 charge, at the following address:

8
9 Department of Agriculture, Trade and Consumer Protection
10 Agricultural Resource Management Division
11 P.O. Box 8911
12 Madison, WI 53708-8911
13 Phone: (608) 224-4500
14 Web: <http://www.datcp.state.wi.us>

15
16 **SECTION 20.** ATPC 33.20 (10) (b) (Note) is amended to read:

17 ATPC 33.20 (10) (b)

18 **Note:** A storage facility at which an operator repackages pesticide for sale or distribution
19 from a storage container to mini-bulk or other containers is considered a
20 "pesticide producing establishment" under the federal act. The operator of that
21 storage facility must obtain a pesticide producing establishment number from the
22 federal environmental protection agency, and must include that establishment
23 number on every mini-bulk or other container filled at that storage facility. Mini-
24 bulk containers must be properly labeled, regardless of whether they are mobile
25 containers.

26
27 Whenever an operator sells pesticide from a storage container, the operator must
28 supply the purchaser with the pesticide labeling required under ss. 94.676 and
29 94.70, Stats.

30
31 **SECTION 21.** ATPC 33.32 (5) (a) and (Note) are amended to read:

32 ATPC 33.32 (5) (a) ~~Except as provided in par. (b), a~~ A mixing and loading pad shall be
33 constructed of portland cement concrete. A portland cement concrete mixing and loading pad
34 constructed on or after November 1, 2006 shall meet the standards specified in chapters 5 and 6
35 of the ~~Wisconsin minimum design standards for concrete agrichemical containment~~ Wisconsin
36 Minimum Design and Construction Standards for Concrete Mixing and Loading Pads and Secondary
37 Containment Structures (February 2005).

1 **Note:** The ~~Wisconsin minimum design standards for concrete agriechemical containment~~
2 Wisconsin Minimum Design and Construction Standards for Concrete Mixing and
3 Loading Pads and Secondary Containment Structures (February 2005) were written by
4 Professor David W. Kammel of the department of biological systems engineering,
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6 the legislative reference bureau. Copies are available from the department, at no
7 charge, at the following address:

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15

16 **SECTION 22.** ATPC 33.32 (5) (b) is repealed.

17 **SECTION 23.** ATPC 33.34 (6) (intro.) and (a) are consolidated, renumbered ATPC 33.34
18 (6) and amended to read:

19 ATPC 33.34 (6) UNLOADING DRY FERTILIZER FROM RAIL CARS. Section ATPC 33.30 and
20 subs. (1) through (5) do not apply to the unloading of dry bulk fertilizer from bottom-unloading
21 rail cars, provided that the operator unloads the fertilizer over ~~one of the following:~~

22 ~~(a)~~ A a fixed or portable containment basin or a portland cement or asphalt concrete pad.
23 The containment basin shall be made of durable rigid material, and shall effectively contain any
24 dry fertilizer that may be discharged during the unloading process. The operator shall routinely
25 inspect and maintain the containment basin or pad to ensure compliance with this paragraph.

26 **SECTION 24.** ATPC 33.34 (6) (b) is repealed.

27 **SECTION 25.** ATPC 33.38 (1) (a) and (Note) are amended to read:

28 ATPC 33.38 (1) (a) A sump that is part of a mixing and loading pad, or part of a portland
29 cement concrete secondary containment structure, shall be constructed of portland cement
30 concrete and shall meet the standards specified in chapters 5 and 6 of the ~~Wisconsin minimum~~
31 ~~design standards for concrete agriechemical containment~~ Wisconsin Minimum Design and

1 Construction Standards for Concrete Mixing and Loading Pads and Secondary Containment Structures

2 (February 2005).

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17

18 **SECTION 26.** ATPC 33.44 (1) (b) and (Note) are amended to read:

19 ATPC 33.44 (1) (b) A concrete secondary containment structure constructed on or after
20 November 1, 2006 shall be constructed of portland cement concrete and shall comply with
21 standards specified in chapters 5 and 6 of the ~~Wisconsin minimum design standards for concrete~~
22 ~~agriechemical containment~~ Wisconsin Minimum Design and Construction Standards for Concrete
23 Mixing and Loading Pads and Secondary Containment Structures (February 2005).

24 **Note:** The ~~Wisconsin minimum design standards for concrete agriechemical containment~~
25 Wisconsin Minimum Design and Construction Standards for Concrete Mixing and
26 Loading Pads and Secondary Containment Structures (February 2005), written by
27 professor David W. Kammel, department of biological systems engineering,
28 University of Wisconsin-Extension, is on file with the department and the
29 legislative reference bureau. Copies are available free of charge from the
30 department at the following address:

31
32 Department of Agriculture, Trade and Consumer Protection
33 Agricultural Resource Management Division
34 P.O. Box 8911
35 Madison, WI 53708-8911
36 Phone: (608) 224-4500
37 Web: <http://www.datcp.state.wi.us>
38

39 **SECTION 27.** ATPC 33.44 (2) is repealed.

1 **SECTION 28.** ATPC 33.52 (3) (d) 2. is amended to read:

2 ATPC 33.52 (3) (d) 2. None of the samples analyzed under sub. (4) (b) contains more that
3 than 20 milligrams of the total nitrogen per liter.

4 **SECTION 29.** ATPC 33.70 (1) (title) is amended to read:

5 ATPC 33.70 (1) (title) ~~ASSESSMENT~~ ASSESSMENT REQUIRED.

6 **SECTION 30.** ATPC 35.01 (3) is amended to read:

7 ATPC 35.01 (3) "Agricultural chemical" means a substance that is a fertilizer or a
8 nonhousehold pesticide, and that is a hazardous substance as defined in s. 292.01-(5) 299.01 (6),
9 Stats.

10 **SECTION 31.** ATPC 35.02 (1) (e) 2. and (Note) are amended to read:

11 ATPC 35.02 (1) (e) 2. Applicable rules of the department of natural resources under chs.
12 NR 700, 706, 708 and 712 to ~~726~~ 727.

13 **Note:** For corrective actions under this chapter, the department is authorized to review
14 compliance with chs. NR 700, 706, 708, and 712 to ~~726~~ 727, and to grant required
15 approvals and variances under those chapters on behalf of the department of
16 natural resources.

17
18 **SECTION 32.** ATPC 35.10 (6) and (Note) are amended to read:

19 ATPC 35.10(6) The corrective action complies with applicable requirements under chs.
20 281 to 285 and 289 to 299, Stats., this chapter, chs. ATPC 29 to 33, and chs. NR 700, 706, 708
21 and 712 to ~~726~~ 727.

22 **Note:** For corrective actions under this chapter, the department is authorized to review
23 compliance with chs. NR 700, 706, 708, and 712 to ~~726~~ 727, and to grant required
24 approvals and variances under those chapters on behalf of the department of
25 natural resources.

26
27 **SECTION 33.** ATPC 35.16 (6) (a) 1. and (Note) are amended to read:

ATCP 35.16 (6) (a) 1. That the contract services will comply with applicable requirements under this chapter, chs. ATCP 29 to 33, and chs. NR 700, 706, 708 and 712 to ~~726~~ 727.

Note: For corrective actions under this chapter, the department is authorized to review compliance with chs. NR 700, 706, 708, and 712 to ~~726~~ 727, and to grant required approvals and variances under those chapters on behalf of the department of natural resources.

SECTION 34. ATCP 40.04 (4) (b) is amended to read:

ATCP 40.04 (4) (b) A ~~\$14~~ \$11.20 agricultural chemical cleanup surcharge for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state, other than a business location or mobile unit licensed under s. 94.685 or 94.703, Stats. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single agricultural chemical cleanup surcharge of ~~\$14~~ \$11.20.

SECTION 35. ATCP 40.06 (2) (a) and (b) are amended to read:

ATCP 40.06 (2) (a) A basic fee of ~~30~~ 23 cents per ton, or \$25, whichever is greater.

(b) A research fee of ~~10~~ 17 cents per ton, or \$1, whichever is greater.

SECTION 36. ATCP 40.08 (8) and (Note) are amended to read:

ATCP 40.08 (8) TERMS AND DEFINITIONS. Terms used in fertilizer labeling shall be consistent with the fertilizer terms and definitions contained in the *Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004) 67 (2014)*.

Note: The *Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004) 67 (2014)* is on file with the department and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at <http://www.aapfco.org>.

SECTION 37. ATCP 40.10 (4) (b) 2. and (Note) are amended to read:

ATCP 40.10 (4) (b) 2. Identify the source of each plant nutrient, using only terms defined in the *Official Publication of the Association of American Plant Food Control Officials*, No. 57 (2004) 67 (2014).

Note: The *Official Publication of the Association of American Plant Food Control Officials*, No. 57 (2004) 67 (2014) is on file with the department and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at <http://www.aapfco.org>.

SECTION 38. ATCP 40.12 (2) (c) 1. and (Note) are amended to read:

ATCP 40.12 (2) (c) 1. The source material is accurately described by a term defined in the *Official Publication of the Association of American Plant Food Control Officials*, No. 57 (2004) 67 (2014).

Note: The *Official Publication of the Association of American Plant Food Control Officials*, No. 57 (2004) 67 (2014) is on file with the department and the legislative reference bureau. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at <http://www.aapfco.org>.

SECTION 39. ATCP 40.16 (1) and (Note) are amended to read:

ATCP 40.16 (1) SAMPLING METHODS. The department may collect official fertilizer samples to determine compliance with plant nutrient guarantees. The department shall collect official samples using applicable methods from the *Inspectors Inspection Manual of the Association of American Plant Food Control Officials*, 6th 8th edition (1999 2009).

Note: The *Inspectors Inspection Manual of the Association of American Plant Food Control Officials*, 6th 8th edition (1999 2009) is on file with the department and the legislative reference bureau. Copies are available from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at <http://www.aapfco.org>.

SECTION 50. ATCP 40.18 (2) and (Note) are amended to read:

1 ATCP 40.18 (2) No fertilizer may contain a metal in a concentration that exceeds the
2 maximum allowable concentration specified for that metal in the ~~statement of uniform~~
3 ~~interpretation and policy No. 25, contained in the~~ *Official Publication of the Association of*
4 *American Plant Food Control Officials, No. 57* 67, statement of uniform interpretation and
5 policy number 25, (2004 2014).

6 **Note:** Statement of uniform interpretation and policy number 25, from the *Official*
7 *Publication of the Association of American Plant Food Control Officials, No. 57*
8 67 (2004 2014), is on file with the department and the legislative reference
9 bureau. Copies may be obtained from the treasurer of the Association of
10 American Plant Food Control Officials, Inc., North Carolina Department of
11 Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at
12 <http://www.aapfco.org>.

13
14 **SECTION 41.** ATCP 42.01 (9) is amended to read:

15 ATCP 42.01 (9) "Feed ingredient" ~~means a constituent material, used in the manufacture~~
16 ~~of a commercial feed, that becomes part of the commercial feed~~ has the meaning specified in s.
17 94.72(1)(g), Stats.

18 **SECTION 42.** ATCP 42.06 (3) and (Note) are amended to read:

19 ATCP 42.06 (3) SINGLE-INGREDIENT FEEDS. Product names for single-ingredient
20 commercial feeds shall be consistent with the feed ingredient definitions specified in the 2006
21 2014 *Official Publication of the Association of American Feed Control Officials.*

22 **Note:** Copies of the *Official Publication of the Association of American Feed Control*
23 *Officials* are on file with the department and the legislative reference bureau.
24 ~~Copies may be obtained from AAFCO treasurer; the name and address of the~~
25 ~~current AAFCO treasurer may be obtained by contacting the department~~ Paper or
26 electronic copies may be obtained from AAFCO at www.aaafco.org.

27
28 **SECTION 43.** ATCP 42.16(1) (b) and (Note) are amended to read:

1 ATCP 42.16 (1) (b) Paragraph (a) does not apply to a commercial feed which is defined
2 as a single ingredient feed product by the 2006 2014 *Official Publication of the Association of*
3 *American Feed Control Officials.*

4 **Note:** Copies of the *Official Publication of the Association of American Feed Control*
5 *Officials* are on file with the department and the legislative reference bureau. ~~You~~
6 ~~may also obtain a copy from the AAFCO treasurer whose address is available~~
7 ~~from the department~~ Paper or electronic copies may be obtained from AAFCO at
8 www.aafco.org.
9

10 **SECTION 44.** ATCP 42.16 (2) (b) is amended to read:

11 ATCP 42.16 (2) (b) The official name of that ingredient as stated in the 2006 2014
12 *Official Publication of the Association of American Feed Control Officials.*

13 **SECTION 45.** ATCP 42.16 (4) (b) 18. is repealed:

14 **SECTION 46.** ATCP 42.32 (2) (b) and (Note) are amended to read:

15 ATCP 42.32 (2) (b) The official name of that ingredient as stated in the 2006 2014
16 *Official Publication of the Association of American Feed Control Officials.*

17 **Note:** Copies of the *Official Publication of the Association of American Feed Control*
18 *Officials* are on file with the department and the legislative reference bureau. ~~You~~
19 ~~may also obtain a copy from the AAFCO treasurer whose address is available~~
20 ~~from the department~~ Paper or electronic copies may be obtained from AAFCO at
21 www.aafco.org.
22

23 **SECTION 47.** ATCP 42.40 (4) (b) and (Note) are amended to read:

24 ATCP 42.40 (4) (b) The official name of that ingredient as stated in the 2006 2014
25 *Official Publication of the Association of American Feed Control Officials.*

26 **Note:** Copies of the *Official Publication of the Association of American Feed Control*
27 *Officials* are on file with the department and the legislative reference bureau. ~~You~~
28 ~~may also obtain a copy from the AAFCO treasurer whose address is available~~
29 ~~from the department~~ Paper or electronic copies may be obtained from AAFCO at
30 www.aafco.org.
31

32 **SECTION 48.** ATCP 42.44 (6) (a), (b) and (c) (Note) are amended to read:

1 ATCP 42.44 (6) (a) The dog or cat food, when fed in recommended amounts, meets all
2 nutrient requirements established in applicable pet nutrient profiles specified in the ~~2006~~ 2014
3 *Official Publication of the Association of American Feed Control Officials*.

4 (b) The dog or cat food is adequate as a sole source of nourishment for dogs or cats when
5 fed according to label directions and according to feeding protocols for dogs and cats specified in
6 the 2014 *Official Publication of the Association of American Feed Control Officials*.

7 (c) **Note:** Copies of the *Official Publication of the Association of American Feed Control*
8 *Officials* are on file with the department and the legislative reference bureau. ~~You~~
9 ~~may also obtain a copy from the AAFCO treasurer whose address is available~~
10 ~~from the department~~ Paper or electronic copies may be obtained from AAFCO at
11 www.aafco.org.

12
13 **SECTION 49.** ATCP 42.46 (3) (c) is amended to read:

14 ATCP 42.46 (3) (c) Capable of being kept ~~in a~~ clean and in good repair.

15 **SECTION 50.** ATCP 42.48 (2) (intro.), (a) and (Note) are amended to read:

16 ATCP 42.48 (2) (intro.) **NUTRITIONAL STANDARDS.** Except as provided under sub. (3),
17 no person may manufacture or distribute a commercial feed intended for dairy cattle, equine,
18 sheep, goats, ducks, geese, rabbits, mink, foxes, swine, poultry, fish, veal calves or herd
19 replacement calves unless one of the following applies:

20 (a) The commercial feed complies with applicable nutritional standards published by the
21 ~~committee on animal nutrition,~~ national research council, national academy of sciences contained
22 in one of the following:

23 1. *Nutrient Requirements of Dairy Cattle* (7th revised edition, 2001).

24 2. *Nutrient Requirements of Horses* (6th revised edition, 2007).

25 3. *Nutrient Requirements of Swine* (11th revised edition, 2012).

26 4. *Nutrient Requirements of Fish and Shrimp* (2011).

1 5. Nutrient Requirements of Small Ruminants: Sheep, Goats, Cervids, and New World
2 Camelids (2007).

3 6. Nutrient Requirements of Beef Cattle (7th revised edition, 1996, update 2000).

4 7. Nutrient Requirements of Poultry (9th revised edition, 1994).

5 8. Nutrient Requirements of Rabbits (2nd revised edition 1977).

6 9. Nutrient Requirements of Mink and Foxes (2nd revised edition, 1982).

7 **Note:** Copies of the nutritional standards under listed in par. (a) are on file with the
8 department and the legislative reference bureau. Copies may also be obtained
9 from the National Academies Press, 500 Fifth St N.W., Washington, D.C. 20001,
10 telephone 800-624-6242, e-mail: customer_service@nap.edu or at the website
11 www.nap.edu.

12
13 **SECTION 51.** ATCP 42.48 (2) (b) (Note) is amended to read:

14 ATCP 42.48 (2) (b)

15 **Note:** If the department has reason to believe that a commercial feed intended for dairy
16 cattle, beef cattle, equine, sheep, goats, ducks, geese, rabbits, mink, foxes, swine,
17 poultry, fish, veal calves or herd replacement calves is not suitable for its intended
18 use, the department may request documentation showing that the feed complies
19 with par. (a) or (b).

20
21 **SECTION 52.** ATCP 42.52 (2) (b), (c) (intro.) and 1., (d), (e), (f), (g) and (o) (intro.) are
22 amended to read:

23 ATCP 42.52 (2) (b) The feed contains any added poisonous, deleterious, or non-nutritive
24 substance which is unsafe within the meaning of 21 CFR 406 21 USC 346. This paragraph does
25 not apply to either of the following:

26 (c) (intro.) A raw agricultural commodity in the feed contains the residue of a pesticide
27 that is unsafe within the meaning of 21 CFR 408(a) 21 USC 346a, unless all of the following
28 apply:

1 1. The pesticide chemical was applied to the raw agricultural commodity according to an
2 exemption or tolerance under ~~21 CFR 408~~ 21 USC 346a.

3 (d) The feed, if fed to an animal, will likely cause the edible product of that animal to
4 contain a pesticide residue which is unsafe within the meaning of ~~21 CFR 408(a)~~ 21 USC
5 346a(a).

6 (e) The feed contains any food additive which is unsafe within the meaning of ~~21 CFR~~
7 ~~409~~ 21 USC 348.

8 (f) The feed contains any color additive which is unsafe within the meaning of ~~21 CFR~~
9 ~~706~~ 21 USC 379e.

10 (g) The feed contains any new animal drug which is unsafe within the meaning of ~~21~~
11 ~~CFR 512~~ 21 USC 360b.

12 (o) (intro.) The feed, when used in normal feeding according to label directions, raises
13 the fluorine content of the total ration, excluding of roughage, above the following amounts for
14 the following classes of animals:

15 **SECTION 53.** ATPC 42.54 (1) (a) and (Note) are amended to read:

16 ATPC 42.54 (1) (a) The non-protein nitrogen ingredients are identified in the 2006 2014

17 *Official Publication of the Association of American Feed Control Officials.*

18 **Note:** Copies of the *Official Publication of the Association of American Feed Control*
19 *Officials* are on file with the department and the legislative reference bureau. You
20 may also obtain a copy from the AAFCO treasurer whose address is available
21 from the department Paper or electronic copies may be obtained from AAFCO at
22 www.aafco.org.

23
24 **SECTION 54.** ATPC 42.56 (1) (a) is amended to read:

25 ATPC 42.56 (1) (a) A holding order ~~or stop sale order~~ under s. 94.72 (13) (b), Stats.

26 **SECTION 55.** ATPC 49.26 (2) (c) is amended to read:

1 ATCP 49.26 (2) (c) All spatial location data used to delineate the farmland preservation
2 zoning districts proposed for certification, submitted in accordance with department
3 requirements on format.

4 **SECTION 56.** ATCP 50.04 (3) (dm) 1. and (e) are amended to read:

5 ATCP 50.04 (3) (dm) 1. Standard values specified in *NRCS Wisconsin Conservation*
6 *Planning Technical Note WI-1* (~~September, 2007~~ November, 2008), companion document to the
7 NRCS technical guide standard 590.

8 (e) The plan shall comply with the NRCS technical guide nutrient management standard
9 590 (September, 2005), except for sections V. D., V. E., and VI., and shall also comply with the
10 *Wisconsin Conservation Planning Technical Note WI-1* (~~September, 2007~~ November, 2008).

11 **SECTION 57.** ATCP 50.56 (3) (b) 4. a. and b. are amended to read:

12 ATCP 50.56 (3) (b) 4. a. NRCS technical guide waste storage facility standard 313 (June,
13 2013 January, 2014).

14 b. NRCS technical guide ~~manure~~ waste transfer standard 634 (~~September, 2012~~ January,
15 2014).

16 **SECTION 58.** ATCP 50.62 (5) (e) 1., 2., 4. and 5. are amended to read:

17 ATCP 50.62 (5) (e) 1. NRCS technical guide waste storage facility standard 313 (~~June,~~
18 ~~2013~~ January, 2014).

19 2. NRCS technical guide waste transfer standard 634 (~~September, 2012~~ January, 2014).

20 4. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

21 5. NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April,
22 2014).

23 **SECTION 59.** ATCP 50.64 (1) (e) and (5) (a) are amended to read:

ATCP 50.64 (1) (e) Heavy use area protection described in NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April, 2014).

(5) (a) The system complies with applicable design, construction, and maintenance standards under this subchapter and NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April, 2014).

SECTION 60. ATCP 50.65 (3) (a) 1. and 2. are amended to read:

ATCP 50.65 (3) (a) 1. NRCS technical guide access road standard 560 (~~September, 2010~~ January, 2014).

2. NRCS technical guide streambank and shoreline protection standard 580 (~~November, 2009~~ August, 2013).

SECTION 61. ATCP 50.66 (3) (a) 1., 2. and 3. are amended to read:

ATCP 50.66 (3) (a) 1. NRCS technical guide animal trails and walkways standard 575 (~~November, 2012~~ January, 2014).

2. NRCS technical guide streambank and shoreline protection standard 580 (~~November, 2009~~ August, 2013).

3. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

SECTION 62. ATCP 50.68 (4) (a) is amended to read:

ATCP 50.68 (4) (a) The cropland cover meets NRCS technical guide cover crop standard 340 (~~February, 2012~~ January, 2014).

SECTION 63. ATCP 50.69 (4) (a) 2. is amended to read:

ATCP 50.69 (4) (a) 2. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

SECTION 64. ATCP 50.70 (4) (b) 3., 7. and 8. are amended to read:

ATCP 50.70 (4) (b) 3. NRCS technical guide fence standard 382 (~~September, 2010~~
January, 2014).

7. NRCS technical guide subsurface drain standard 606 (~~October, 2012~~ March, 2014).

8. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 65. ATCP 50.705 (3) (d) and (5) (a) 1., 2. and 3. are amended to read:

ATCP 50.705 (3) (d) A non-permanent storage area allowed under NRCS technical guide
waste treatment standard 629 (~~March, 2013~~ January, 2014).

(5) (a) 1. NRCS technical guide waste storage facility standard 313 (~~June, 2013~~ January,
2014).

2. NRCS technical guide waste treatment standard 629 (~~March, 2013~~ January, 2014).

3. NRCS technical guide waste transfer standard 634 (~~September, 2012~~ January, 2014).

SECTION 66. ATCP 50.71 (3) (b) 1. is amended to read:

ATCP 50.71 (3) (b) 1. NRCS technical guide fence standard 382 (~~September, 2010~~
January, 2014).

SECTION 67. ATCP 50.72 (3) (a) 2. is amended to read:

ATCP 50.72 (3) (a) 2. NRCS technical guide fence standard 382 (~~September, 2010~~
January, 2014).

SECTION 68. ATCP 50.73 (3) (d) 2., 4., 10. and 11. are amended to read:

ATCP 50.73 (3) (d) 2. NRCS technical guide sediment basin standard 350 (~~December,~~
~~2010~~ April, 2014).

4. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

10. NRCS technical guide subsurface drain standard 606 (~~October, 2012~~ March, 2014).

11. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March,
2014).

1 **SECTION 69.** ATCP 50.75 (4) (a) 1. is amended to read:

2 ATCP 50.75 (4) (a) 1. NRCS technical guide fence standard 382 (~~September, 2010~~
3 January, 2014).

4 **SECTION 70.** ATCP 50.76 (5) (a) 1. and 6. are amended to read:

5 ATCP 50.76 (5) (a) 1. NRCS technical guide spring development standard 574 (~~June,~~
6 ~~2008 March,~~ 2014).

7 6. NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April,
8 2014).

9 **SECTION 71.** ATCP 50.77 (4) (a) 2., 3. and 4. are amended to read:

10 ATCP 50.77 (4) (a) 2. NRCS technical guide waste treatment standard 629 (~~March, 2013~~
11 January, 2014).

12 3. NRCS technical guide waste storage facility standard 313 (~~June, 2013~~ January, 2014).

13 4. NRCS technical guide waste transfer standard 634 (~~September, 2012~~ January, 2014).

14 **SECTION 72.** ATCP 50.80 (3) (a) 4., 5. and 8. are amended to read:

15 ATCP 50.80 (3) (a) 4. NRCS technical guide streambank and shoreline protection
16 standard 580 (~~November, 2009~~ August, 2013).

17 5. NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April,
18 2014).

19 8. NRCS technical guide animal trails and walkways standard 575 (~~November, 2012~~
20 January, 2014).

21 **SECTION 73.** ATCP 50.83 (3) (a) 2. is amended to read:

22 ATCP 50.83 (3) (a) 2. NRCS technical guide fence standard 382 (~~September, 2010~~
23 January, 2014).

24 **SECTION 74.** ATCP 50.85 (4) (a) 2. is amended to read:

1 ATCP 50.85 (4) (a) 2. NRCS technical guide underground outlet standard 620 (~~January,~~
2 ~~2011~~ March, 2014).

3 **SECTION 75.** ATCP 50.86 (4) (b) 2., 3., 4., 6. and 7. are amended to read:

4 ATCP 50.86 (4) (b) 2. NRCS technical guide sediment basin standards 350 (~~December,~~
5 ~~2010~~ April, 2014).

6 3. NRCS technical guide waste transfer standard 634 (~~September, 2012~~ January, 2014).

7 4. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

8 6. NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April,
9 2014).

10 7. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

11 **SECTION 76.** ATCP 50.87 (4) (a) 1. is amended to read:

12 ATCP 50.87 (4) (a) 1. NRCS technical guide karst sinkhole treatment standard ~~725~~ 527
13 (~~December, 2010~~).

14 **SECTION 77.** ATCP 50.88 (3) (a) 2., 3. and 5. are amended to read:

15 ATCP 50.88 (3) (a) 2. NRCS technical guide fence standard 382 (~~September, 2010~~
16 January, 2014).

17 3. NRCS technical guide streambank and shoreline protection standard 580 (~~November,~~
18 ~~2009~~ August, 2013).

19 5. NRCS technical guide heavy use area protection standard 561 (~~January, 2011~~ April,
20 2014).

21 **SECTION 78.** ATCP 50.885 (4) (a) 1., 2. and 3. are amended to read:

22 ATCP 50.885 (4) (a) 1. NRCS technical guide access road standard 560 (~~September,~~
23 ~~2010~~ January, 2014).

2. NRCS technical guide streambank and shoreline protection standard 580 (~~November, 2009~~ August, 2013).

3. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

SECTION 79. ATCP 50.90 (3) (b) 1. and 2. are amended to read:

ATCP 50.90 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~October, 2012~~ March, 2014).

2. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 80. ATCP 50.91 (3) (b) 6. and 7. are amended to read:

ATCP 50.91 (3) (b) 6. NRCS technical guide subsurface drain standard 606 (~~October, 2012~~ March, 2014).

7. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 82. ATCP 50.92 (3) (b) 1. and 2. are amended to read:

ATCP 50.92 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~October, 2012~~ March, 2014).

2. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 83. ATCP 50.93 (4) (a) 1. and 2. are amended to read:

ATCP 50.93 (4) (a) 1. NRCS technical guide waste transfer standard 634 (~~September, 2012~~ January, 2014).

2. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 84. ATCP 50.94 (3) (a) 2. is amended to read:

ATCP 50.94 (3) (a) 2. NRCS technical guide fence standard 382 (~~September, 2010~~ January, 2014).

SECTION 85. ATCP 50.95 (3) (a) 2. and 4. are amended to read:

ATCP 50.95 (3) (a) 2. NRCS technical guide fence standard 382 (~~September, 2010~~
January, 2014).

4. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 86. ATCP 50.96 (3) (b) 2., 6. and 7. are amended to read:

ATCP 50.96 (3) (b) 2. NRCS technical guide fence standard 382 (~~September, 2010~~
January, 2014).

6. NRCS technical guide subsurface drain standard 606 (~~October, 2012~~ March, 2014).

7. NRCS technical guide underground outlet standard 620 (~~January, 2011~~ March, 2014).

SECTION 87. ATCP 71.02 (5) (b) 3. and 4. are amended to read:

ATCP 71.02 (5) (b) 3. For a food warehouse that does not store potentially hazardous
food and has fewer than 50,000 square feet of storage area, ~~\$150~~ \$100.

4. For a food warehouse that does not store potentially hazardous food and has at least
50,000 square feet of storage area, ~~\$300~~ \$200.

SECTION 88. ATCP 90.01 (15g) and (Note) are created to read:

ATCP 90.01 (15g) "*NIST Handbook 44*" means *NIST Handbook 44* (2014 edition)
published by the National Institute of Standards and Technology, United States department of
commerce.

Note: Copies of *NIST Handbook 44*, Specifications, Tolerances and Other Technical
Requirements for Weighing and Measuring Devices (2014 edition) are on file
with the department and the legislative reference bureau. Copies may be obtained
from the U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20102-
0001, website: www.nist.gov.

SECTION 89. ATCP 90.01 (15r) and (Note) are created to read:

1 ATCP 90.01 (15r) "*NIST Handbook 133*" means *NIST Handbook 133* (2014 edition)
2 published by the National Institute of Standards and Technology, United States department of
3 commerce.

4 **Note:** Copies of *NIST Handbook 133*, Checking the Net Contents of Packaged Goods
5 (2014 edition) are on file with the department and the legislative reference bureau.
6 Copies may be obtained from the U.S. Government Printing Office, Stop SSOP,
7 Washington, D.C. 20102-0001, website: www.nist.gov.
8

9 **SECTION 90.** ATCP 90.01 (26) is amended to read:

10 ATCP 90.01 (26) "Unreasonable shortage" means a shortage that exceeds the maximum
11 allowable variation specified for a commodity in the ~~national institute of standards and~~
12 ~~technology handbook 133, "Checking the Net Contents of Packaged Goods," 2013 edition~~ *NIST*
13 *Handbook 133*.

14 **SECTION 91.** ATCP 90.08 (14) (a) 2. and (Note) are amended to read:

15 ATCP 90.08 (14) (a) 2. If fluid milk, fluid milk products, ice cream, or frozen desserts
16 are measured by and packaged in measure containers as defined in the "Measure Container
17 Code" of the ~~national institute of standards and technology handbook~~ *NIST Handbook 44*, the net
18 quantity declaration need not comply with the location requirement under s. ATCP 90.07 (2).

19 **Note:** The "Measure Container Code" of the ~~national institute of standards and~~
20 ~~technology handbook~~ *NIST Handbook 44* is on file with the department, the
21 secretary of state and the legislative reference bureau.
22

23 **SECTION 92.** ATCP 90.09 (2) (a) and (c) (Note) and (4) (a) are amended to read:

24 ATCP 90.09 (2) (a) The department or a municipal sealer may determine the net contents
25 of packaged commodities in an inspection lot based on an enforcement sample collected from
26 that inspection lot. The enforcement sample shall be collected, tested and analyzed according to
27 applicable provisions of the ~~national institute of standards and technology handbook~~ *NIST*

~~Handbook 133, "Checking the Net Contents of Packaged Goods."~~ Unless otherwise specified by
handbook NIST Handbook 133, the inspection lot shall be determined according to par. (b).

(c) (Note)

Note: A copy of the ~~national institute of standards and technology handbook~~ NIST Handbook 133, "Checking the Net Contents of Packaged Goods," is on file with the department, ~~the secretary of state and the legislative reference bureau.~~

(4) (a) If, in any enforcement sample under sub. (2) (a), the number of unreasonable shortages in individual packages exceeds the number specified for an enforcement sample of that size in the ~~national institute of standards and technology handbook~~ NIST Handbook 133, the department or a municipal sealer shall issue an order prohibiting the sale of the entire inspection lot from which that enforcement sample is collected.

SECTION 93. ATCP 91.01 (4) and (Note) are amended to read:

ATCP 91.01 (4) "NIST Handbook 130" means NIST Handbook 130 (2013 2014 edition) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of NIST Handbook 130 (2013 2014 edition) are on file with the department and the legislative reference bureau. Copies may be obtained from the U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20102-0001, website or at www.nist.gov.

SECTION 94. ATCP 92.01 (10d) is created to read:

ATCP 92.01 (10d) "NIST" means the national institute of standards and technology, United States department of commerce.

SECTION 95. ATCP 92.01 (10h) and (Note) are created to read:

ATCP 92.01 (10h) "NIST Handbook 44" means NIST Handbook 44 (2014 edition) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 44*, Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices (2014 edition) are on file with the department and the legislative reference bureau. Copies may be obtained from the U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20102-0001, website: www.nist.gov.

SECTION 96. ATPC 92.01 (10p) and (Note) are created to read:

ATPC 92.01 (10p) "*NIST Handbook 130*" means *NIST Handbook 130* (2014 edition) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 130*, Uniform Laws and Regulation in the Areas of Legal Metrology and Engine Fuel Quality (2014 edition) are on file with the department and the legislative reference bureau. Copies may be obtained from the U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20102-0001, website: www.nist.gov.

SECTION 97. ATPC 92.01 (10t) and (Note) are created to read:

ATPC 92.01 (10t) "*NIST Handbook 133*" means *NIST Handbook 133* (2014 edition) published by the National Institute of Standards and Technology, United States department of commerce.

Note: Copies of *NIST Handbook 133*, Checking the Net Contents of Packaged Goods (2014 edition) are on file with the department and the legislative reference bureau. Copies may be obtained from the U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20102-0001, website: www.nist.gov.

SECTION 98. ATPC 92.02 (1) and (Note), (2) (a) and (3) (c) are amended to read:

ATPC 92.02 (1) Except as provided in this chapter, weighing and measuring devices shall comply with applicable specifications, tolerances and other technical requirements set forth in ~~the national institute of standards and technology handbook~~ *NIST Handbook 44* (specifications, tolerances and other technical requirements for weighing and measuring devices), 2013 edition.

1 **Note:** See s. 98.03 (2), Stats. The ~~2013~~ 2014 edition of the ~~National Institute of~~
2 ~~Standards and Technology~~ NIST Handbook 44 (Specifications, Tolerances and
3 Other Technical Requirements for Weighing and Measuring Devices) is on file
4 with the department and the legislative reference bureau. Copies may be
5 purchased from the U.S. Government Printing Office, Superintendent of
6 Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Excerpts can be
7 viewed at <http://www.nist.gov/index.html>.
8

9 (2) (a) The chief of the office of weights and measures of the ~~national institute of~~
10 ~~standards and technology~~ NIST.

11 (3) (c) A commercial weighing or measuring device for which neither the ~~national~~
12 ~~institute of standards and technology~~ NIST nor the national conference of weights and measures
13 has yet adopted testing and certification procedures, provided that the department authorizes the
14 sale and use of that device in this state. A person seeking department authorization shall apply to
15 the department in writing. The application shall include relevant engineering and use
16 specifications for the device, and shall document that neither the ~~national institute of standards~~
17 ~~and technology~~ NIST nor the national conference on weights and measures has yet adopted
18 testing and certification procedures for that device. The department shall grant or deny
19 authorization within 30 days after the department receives a complete application, including any
20 supplementary information requested by the department.

21 **SECTION 99.** ATPC 92.06 (1) (a) and (b), (2) and (3) are amended to read:

22 ATPC 92.06 (1) (a) The ~~national institute of standards and technology handbook 44~~
23 ~~(specifications, tolerances, and other technical requirements for weighing and measuring~~
24 ~~devices), 2013 edition~~ NIST Handbook 44.

25 (b) The ~~national institute of standards and technology handbook 133 (checking the net~~
26 ~~contents of packaged goods), 2013 edition~~ NIST Handbook 133.

(2) PRICE VERIFICATION SYSTEMS. Inspections of price verification systems shall comply with NIST Handbook 130, chapter V, section 7 ~~"test procedures" from the chapter titled "examination procedure for price verification,"~~ national institute of standards and technology handbook 130 (uniform laws and regulation in the areas of legal metrology and engine fuel quality), 2013 edition.

(3) INSPECTION EQUIPMENT AND STANDARDS. The department, or a laboratory certified by the ~~national institute of standards and technology~~ NIST, shall inspect, test, and approve testing equipment and standards used by inspectors. The department or certified laboratory shall inspect, test, and approve the equipment at least once every 2 years unless the department specifies a different time interval for specific equipment or standards.

SECTION 100. ATCP 92.22 (1) (b) and (Note) and (2) are amended to read:

ATCP 92.22 (1) (b) Comply with applicable requirements contained in the ~~national institute of standards and technology handbook~~ NIST Handbook 44 (specifications, tolerances, and other technical requirements for weighing and measuring devices), 2013 edition.

Note: The ~~national institute of standards and technology handbook~~ NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) 2013 2014 edition, is on file with the department and the legislative reference bureau. You may purchase copies of this handbook from the U.S. Government Printing Office, Superintendent of Document Sales, P.O. Box 371954, Pittsburgh, PA 15250-7954.

(2) TEST EQUIPMENT AND STANDARDS. The department, or a laboratory certified by the ~~national institute of standards and technology~~ NIST, shall inspect, test, and approve testing equipment and standards used by weights and measures service companies. The department or certified laboratory shall inspect, test, and approve the equipment at least once every 2 years unless the department specifies a different time interval for specific equipment or standards.

SECTION 101. ATCP 92.40 (2) is amended to read:

1 ATCP 92.40 (2) The thermometer well shall be constructed so as to permit insertion of a
2 ~~mercury in glass~~ Fahrenheit thermometer which has one-degree graduations, spaced at least 0.04
3 inch apart.

4 **SECTION 102.** ATCP 94.200 (1) is amended to read:

5 ATCP 94.200 (1) The following standards of ASTM ~~International~~ the 2014 Annual Book
6 of ASTM Standards of the American society for testing and materials are incorporated by
7 reference into this chapter:

8 (a) ~~ASTM D396-09a~~ D396-14, Standard Specification for Fuel Oils standard
9 specification for fuel oils.

10 (b) ~~ASTM D910-07a~~ D910-13a, Standard Specification for Aviation Gasolines standard
11 specification for aviation gasolines.

12 (c) ~~ASTM D975-09b~~ D975-14, Standard Specification for Diesel Fuel Oils standard
13 specification for diesel fuel oils.

14 (d) ~~ASTM D1655-09~~ D1655-13a, Standard Specification for Aviation Turbine Fuels
15 standard specification for aviation turbine fuels.

16 (e) ~~ASTM D3699-08~~ D3699-13b, Standard Specification for Kerosine standard
17 specification for kerosine.

18 (f) ~~ASTM D4806-09~~ D4806-13a, Standard Specification for Denatured Fuel Ethanol for
19 Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel standard
20 specification for denatured fuel ethanol for blending with gasolines for use as automotive spark-
21 ignition engine fuel.

22 (g) ~~ASTM D4814-04b²¹~~ D4814-14, Standard Specification for Automotive Spark-
23 Ignition Engine Fuel standard specification for automotive spark-ignition engine fuel.

(h) ~~ASTM D5798-09 D5798-13a, Standard Specification for Fuel Ethanol (Ed75-Ed85)~~
~~for Automotive Spark-Ignition Engines~~ standard specification for ethanol fuel blends for
flexible-fuel for automotive spark-ignition engines.

(i) ~~ASTM D6227-04a D6227-14, Standard Specification for Grade 82 Unleaded~~
~~Aviation Gasoline~~ standard specification for unleaded aviation gasoline containing a non-
hydrocarbon component.

(j) ~~ASTM D6751-09a D6751-12, Standard Specification for Biodiesel Fuel Blend Stock~~
~~(B100) for Middle Distillate Fuels~~ standard specification for biodiesel fuel blend stock (B100)
for middle distillate fuels.

(k) ~~ASTM D7467-09a D7467-13, Standard Specification for Diesel Fuel Oil, Biodiesel~~
~~Blend (B6 to B20)~~ standard specification for diesel fuel oil, biodiesel blend (B6 to B20).

(L) ~~ASTM D7547-09 D7547-14, Standard Specification for Unleaded Aviation Gasoline~~
standard specification for hydrocarbon unleaded aviation gasoline.

SECTION 103. ATCP 105.005 (2) is amended to read:

ATCP 105.005 (2) MANUFACTURERS AND PRODUCERS. In order to determine the selling
price to its own retail customers, a manufacturer or producer of cigarettes and other tobacco
products, fermented malt beverages, intoxicating liquor or wine ~~fuel~~ who acts as both a
wholesaler and a retailer shall use its selling price to other retailers plus the wholesaler markup
compounded with the retailer markup.

SECTION 104. ATCP 123.12 (1) (intro.) and (a) are consolidated, renumbered ATCP
123.12 (1) and amended to read:

ATCP 123.12 (1) This subchapter does not apply to any of the following:

1 ~~(a) Any~~ activity, including any notice to a consumer of a subscription change, that is
2 specifically authorized under ~~ss. 196.207, 196.20~~, s. 196.204 or 196.499 (4), Stats., or under a
3 rule or order issued by the state of Wisconsin public service commission.

4 **SECTION 105.** ATPC 123.12 (1) (b) is repealed.

5 **SECTION 106.** ATPC 127.80 (2) (Note) is repealed.

6 **SECTION 107.** ATPC 161.43 (3) is amended to read:

7 ATPC 161.43 (3) MATCHING CONTRIBUTIONS. The recipient of a grant award under s.
8 ATPC 161.42 shall make a matching contribution to the grant project. The matching
9 contribution shall be equal to at least ~~33%~~ of the grant award. A matching contribution may
10 include the reasonable value of the grant recipient's direct contribution of capital, land, labor,
11 equipment or cash to the grant project. A matching contribution may include grant funds from
12 sources other than the department.

13 **SECTION 108. EFFECTIVE DATE:** This rule takes effect on the first day of the month
14 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
15 (intro.), Stats.

Dated this _____ day of _____, 2015.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Technical Rule
Adm. Code Reference: ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90,
91, 92, 94, 105, 123, 127 and 161
Rules Clearinghouse #: 14-047
DATCP Docket #: 14-R-03

Rule Summary

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

Plant Inspection and Pest Control

Makes a small change indicating that a responsible state agency, rather than a U.S. department of agriculture official, may now declare an area to be infested with thousand cankers disease.

Pesticide Use and Control

- Decreases licensing fees and surcharges to be consistent with recent statutory changes.
- Corrects spelling and capitalization errors.
- Changes several notes to provide online resources for certification, training and examination materials.

Pesticide Product Restrictions

- Corrects incorrect references to subsections and the misspelling of "strychnine."
- Amends notes to update website addresses.
- Removes outdated reference to treatment of aldicarb from the 1980s.
- Incorporates by reference the most recent edition of the current rule standard concerning pesticide poisonings.
- Modifies the record keeping provision relating to chloropicrin to reflect that soil temperature at the time of application is not required to be kept.

Fertilizer and Pesticide Bulk Storage

- Incorporates by reference the most recent edition of minimum design standards for concrete agrichemical containment.
- Updates sections relating to the use of tarps for dry fertilizer unloading from railway cars and sections relating to asphalt and concrete block structures.

Agricultural Chemical Cleanup Program

Amends references required by the renumbering of an administrative code chapter relating to the department of natural resources and corrects a statutory reference to "hazardous substance."

Fertilizer and Related Products

- Decreases various license and tonnage fees and surcharges to be consistent with recent statutory changes.
- Incorporates by reference the most recent edition of the current rule standard concerning fertilizers.

Commercial Feed

Updates the technical standards in the current rule to the most recent versions. Several notes have been modified to add more information about obtaining electronic copies of those publications.

Farmland Preservation

Makes a small change to add language into the zoning section to match language used in the planning section.

Soil and Water Resource Management Program

Updates several sections to reference the current versions of technical standards.

Food Warehouse and Bulk Milk Distributors

Corrects an outdated fee structure relating to the re-inspection of small warehouses which hold non-potentially hazardous foods versus those that hold potentially hazardous foods.

Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights and Measures; Petroleum and Other Liquid Fuel Products

Corrects small grammatical errors and updates the technical references to cite the current NIST Handbook and ASTM fuel standards.

Sales Below Cost

Corrects a grammatical error.

Electronic Communications Services

Aligns the rule with recent legislature changes.

Direct Marketing

Deletes a note no longer necessary in that section.

Agricultural Development and Market Promotion

Amends the "Buy Local" section to reflect a statute change that directs the matching requirement to be an amount at least equal to the grant amount.

Small Business Affected

This rule will not have any impact on small businesses or other business. This rule makes minor technical changes that will not have any impact on business standards, costs or operations.

Reporting, Bookkeeping and other Procedures

The proposed rule does not create any reporting, bookkeeping or other requirement for small businesses.

Professional Skills Required

The proposed rule does not require any profession skill of small businesses.

Accommodation for Small Business

This rule has no impact upon small businesses and as a result, no accommodations are needed.

Conclusion

This rule will not have any effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2) (e), Stats.

Dated this 29th day of October, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By David V. Meany
David Meany, Chief Legal Counsel

**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Chaps. ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 91, 92, 94, 105, 123, 127 and 161

Subject

Technical Rule Changes

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG SEG-S

Chapter 20, Stats. Appropriations Affected

Fiscal Effect of Implementing the Rule

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget
		<input type="checkbox"/> Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

<input type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

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Aligns the rule with recent legislature changes.

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Agricultural Development and Market Promotion

Amends the "Buy Local" section to reflect a statute change that directs the matching requirement to be an amount at least equal to the grant amount.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Small Businesses

This rule makes technical housekeeping changes that will have no effect upon small businesses.

Utility Rate Payers

The rule will have no impact on utility rate payers.

Local Governments

This rule will not impact local governments. Local governments will not have any implementation or compliance costs.

General Public

This rule makes technical changes to the existing rules identified above. The proposed rule will not have any economic impact on the general public or the State's economy different from the impact of the existing rules that are proposed to be amended.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule will benefit the public and various business sectors, as described above, by making technical changes to existing rules.

General Public

The general public and consumers will benefit from the technical changes in this rule through the clarification and updating of existing rules.

Alternatives

This rule makes necessary technical changes in existing rules. If DATCP does not make the proposed technical changes, there will continue to be outdated provisions in existing regulations, inconsistencies between regulations and referenced documents, and certain regulations will lack necessary clarity.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit businesses and the general public for the reasons stated above.

Compare With Approaches Being Used by Federal Government

The technical changes are proposed to ensure that the specified existing DATCP rules remain consistent with federal statutes and regulations.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The housekeeping and technical rules changes proposed in this rule will not create any disparities between Wisconsin and the adjacent states.

Comments Received in Response to Web Posting and DATCP Response

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.